
(2022) 12 TEL CK 0034

High Court For The State Of Telangana:: At Hyderabad

Case No: Criminal Petition No. 10858 Of 2022

K. Anand

APPELLANT

Vs

State Of Telangana
And 4 Others

RESPONDENT

Date of Decision: Dec. 15, 2022

Acts Referred:

- Code Of Criminal Procedure, 1973 - Section 231, 311, 482
- Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 - Section 15A(4)

Hon'ble Judges: K.Surender, J

Bench: Single Bench

Advocate: B Rachna

Final Decision: Allowed

Judgement

1. This Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") by the petitioner seeking to set

aside the order dated 18.10.2022 passed in CrI.M.P.No.265 of 2022 in Spl.S.C.No.57 of 2016 by the Special Sessions Judge for Trial of Cases under

SCs/STs (POA) Act cum II Additional District and Sessions Judge at Adilabad by allowing the petitioner to summon the proposed two witnesses for

evidence.

2. Heard learned counsel for the petitioner and learned Additional Public Prosecutor for the respondent " State. Perused the record.

3. The prosecution filed an application under Section 311 of Cr.P.C. before Special Sessions Judge for Trial of Cases under SCs/STs (POA) Act cum

II Additional District and Sessions Judge at Adilabad praying the Court to examine two witnesses viz., Mohammed Faizuddin Siddiqui @ Sahar S/o

Mohamed Waheeduddin Siddiqui and Tej Rao Devtale S/o Shankar Rao. The main ground on which the prosecution is seeking the examination of the

said two witnesses is that though the witnesses were examined during the course of investigation, their names were not cited in the memo of evidence

at the time of filing of charge sheet. The relevance of the witnesses is to the effect that they are neighbours of the land of the de facto complainant

which was encroached upon by the accused.

4. Sections 311, 231 of Cr.P.C. and 15-A (4) of SC/ST (POA) Act, 2015 are extracted hereunder:

311. Power to summon material witness, or examine person present. Any Court may, at any stage of any inquiry, trial or other proceeding under this

Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any

person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be

essential to the just decision of the case.

231. Evidence for prosecution.

(1) On the date so fixed, the Judge shall proceed to take all such evidence as may be produced in support of the prosecution.

(2) The Judge may, in his discretion, permit the cross-examination of any witness to be deferred until any other witness or witnesses have been

examined or recall any witness for further cross-examination.

15A. Rights of victims and witnesses. -

(4) A victim or his dependent shall have the right to apply to the Special Court or the Exclusive Special Court, as the case may be, to summon parties

for production of any documents or material, witnesses or examine the persons present.

5. Since the case is Sessions Case, the evidence of the prosecution can be adduced under Section 231 of Cr.P.C. The wording 231 of Cr.P.C. i.e.,

“the Judge shall proceed to take all evidence as may be produced in support of the prosecution will not confine to the witnesses named in the

memo of evidence filed along with the charge sheet but also the other witnesses that the prosecution intends to examine in their support.

6. Apart from the procedure prescribed under Section 231 of Cr.P.C., Section 311 of Cr.P.C. also enables the prosecution or accused to examine the

witnesses who are produced before the Court.

7. The provision under Section 15-A (4) of SC/ST (POA) Act states that a victim or dependent shall have the right to apply to the Special Court for

summoning parties for production of any document or witnesses to be examined. The provision under Section 15-A (4) of SC/ST (POA) Act is similar

to the provisions under Sections 311 and 231 of Cr.P.C.

8. The reason given by the learned Sessions Judge is that the prosecution has not given sufficient reasons for filing the said application under Section

311 Cr.P.C. at the belated stage. Since the stage at which the application was filed was the stage of examining the Investigating Officer, this Court

deems it appropriate to direct the learned Sessions Judge to record the evidence of these two witnesses, since the witnesses speak about their

knowledge about the alleged encroachment and the acts of the accused attracting the provisions under Section SC/ST (POA) Act.

9. Accordingly, the Criminal Petition is allowed and the order dated 18.10.2022 passed in CrI.M.P.No.265 of 2022 in Spl.S.C.No.57 of 2016 passed by

Special Sessions Judge for Trial of Cases under SC/ST (POA) Act cum II Additional District and Sessions Judge at Adilabad is hereby set aside. The

Sessions Court is directed to examine the said two witnesses viz., Mohammed Faizuddin Siddiqui @ Sahar S/o Mohamed Waheeduddin Siddiqui and

Tej Rao Devtale S/o Shankar Rao on behalf of prosecution.

Miscellaneous applications pending, if any, shall stand closed.